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(b) The appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) BIA is considered an interested party in any proceeding before the Board. The Board may request that BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§ 4.312 Board decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse, or set aside any proposed finding, conclusion, or order of an administrative law judge, Indian probate judge, or BIA official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§ 4.313 Amicus curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene, to join other parties, to appear as amicus curiae, or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. The Board may grant the permission or relief requested for specified purposes and subject to limitations it established. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

43 CFR Subtitle A (10-1-10 Edition)

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge, Indian probate judge, or BIA official that at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration of a Board decision.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any Federal court to the Board for further proceedings, the Board will remand the matter to an administrative law judge, an Indian probate judge, or BIA. In the alternative, to the extent the court's directive and time limitations permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries about any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the

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administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems this action appropriate. If, before a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the OHA Director will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues that were before the administrative law judge or Indian probate judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 70 FR 11826, Mar. 9, 2005, unless otherwise noted.

§ 4.320 Who may appeal a judge's decision or order?

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

- (a) On a petition for rehearing;
- (b) On a petition for reopening;
- (c) Regarding purchase of interests in a deceased Indian's trust estate; or
- (d) Regarding modification of the inventory of a trust estate.

[73 FR 67288, Nov. 13, 2008]

§ 4.321 How do I appeal a judge's decision or order?

(a) A person wishing to appeal a decision or order within the scope of § 4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate

appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

[73 FR 67288, Nov. 13, 2008]

§ 4.322 What must an appeal contain?

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

[73 FR 67288, Nov. 13, 2008]

§ 4.323 Who receives service of the notice of appeal?

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

[73 FR 67288, Nov. 13, 2008]

§ 4.324 How is the record on appeal prepared?

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify the agency concerned, which must return the duplicate record filed under subpart J of part 30 of this subtitle to the designated LTRO.

(b) The LTRO must conform the duplicate record to the original. Thereafter, the duplicate record will be available for inspection either at the LTRO or at the agency.

(c) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to